

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD

COMMERCIAL NATIONAL FLOORING, INC.

and

Case 17--CA--15163

RESILIENT FLOOR & DECORATIVE COVERING  
WORKERS LOCAL 1179, AFFILIATED WITH  
INTERNATIONAL BROTHERHOOD OF PAINTERS  
& ALLIED TRADES, AFL--CIO

DECISION AND ORDER

*By Chairman Stephens and Members Cavanaugh and Wright*  
Upon a charge filed by Resilient Floor & Decorative Covering Workers

Local 1179, affiliated with International Brotherhood of Painters & Allied Trades (the Union) on August 20, 1990, the General Counsel of the National Labor Relations Board issued a complaint on September 14, 1990, against Commercial National Flooring, Inc. (the Respondent), alleging that it has violated Section 8(a)(5) and (1) of the National Labor Relations Act. Although properly served copies of the charge and complaint, the Respondent has failed to file an answer.

On October 22, 1990, the General Counsel filed a motion to transfer proceeding to the Board and a Motion for Summary Judgment. On October 25, 1990, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

## Ruling on Motion for Summary Judgment

Section 102.20 of the Board's Rules and Regulations provides that the allegations in the complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. The complaint states that unless an answer is filed within 14 days of service, "all of the allegations in the Complaint shall be deemed to be admitted to be true and shall be so found by the Board." Further, the undisputed allegations in the Motion for Summary Judgment disclose that by letter dated October 1, 1990, counsel for the General Counsel notified the Respondent that although it had failed to file an answer within the required 14 day period, the Respondent had been given until the close of business on Friday, October 5, 1990, to file its answer. The Respondent was also advised that unless an answer was filed by that extended date, a Motion for Summary Judgment would be filed. The Respondent telephoned counsel for the General Counsel on October 4, 1990, acknowledging receipt of the letter, and stating that it intended to comply with the Union's information request, the basis of the complaint at issue. The Respondent has not, however, filed an answer to the complaint.

In the absence of good cause being shown for the failure to file a timely answer to the complaint, we grant the General Counsel's Motion for Summary Judgment.

On the entire record, the Board makes the following

## Findings of Fact

## I. Jurisdiction

At all times material, the Respondent, a corporation with an office and place of business in Englewood, Ohio, has been engaged in commercial floor covering. At all times material, the Respondent performed commercial floor covering at two jobsites in Kansas City, Missouri. During the 12-month period ending September 1, 1990, the Respondent purchased and received at its Englewood, Ohio facility products, goods, and materials valued in excess of \$50,000 directly from points outside the State of Ohio and sold and shipped from its Englewood, Ohio facility products, goods, and materials valued in excess of \$50,000 directly to points outside the State of Ohio. We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act, and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

## II. Alleged Unfair Labor Practices

A. The Unit and the Union's Representative Status

The following employees of the Respondent constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act:

All workmen of Respondent who handle the tools and materials of the trade in doing all work which may consist of measuring, cutting and laying of old and new carpet, linoleum-vinyl and all types of resilient floor and wall covering material, whether in sheets, rolls, squares, or interlocked. Plastic, laminated plastic, and metal wall tile, fitting devices for attachment of carpet, linoleum-vinyl, rubber and all other resilient floor and wall coverings, and fitting of metal or plastic caps and corners used in the installation of linoleum-vinyl and plastic counters, tables and steps. Artificial turf and derivatives thereof, also shall include Monolithic covering (Monolithic shall mean: All resilient seamless materials such as epoxy, polyurethane, plastics, and their derivatives components, systems and all other material used as a resilient floor or was [sic] covering, exclusive of the way in which they are applied.); and handling and preparatory work for all the above mentioned, including underlayment in the geographical area of Kansas City, and all areas in Missouri over which the Union exercises

jurisdiction and the following counties in Kansas: Wyandotte, Johnson, Leavenworth, Bourbon, Linn and Miami, and such other area as may be assigned by the International Brotherhood of Painters and Allied Trades, EXCLUDING guards and supervisors as defined in the Act.

At all times material, the Union has been the designated exclusive representative of the Unit for the purposes of collective bargaining concerning rates of pay, wages, hours of employment, and other terms and conditions of employment, and has been recognized as such by the Respondent. Recognition has been embodied in a valid 8(f) collective-bargaining agreement effective by its terms for the period June 29, 1990, to March 31, 1991.

#### B. The Violations

By letters dated July 27 and August 7, 1990, the Union requested the Respondent to furnish it with the following information:

All records in [Respondent's] custody which demonstrate all hours worked by employees covered by the agreement on the two jobsites described above, as well as records which will show the amount of wages paid to each such employee on each job, the fringe benefit contributions made, and the dues deductions made.

This information is necessary for, and relevant to, the Union's performance of its function as the exclusive collective-bargaining representative of the unit. The Respondent has failed and refused to furnish the Union with this information since about July 27, 1990.

We find that, by these acts and conduct, the Respondent has failed and refused to bargain collectively and in good faith with the representative of its employees, and has violated Section 8(a)(5) and (1) of the Act.

#### Conclusions of Law

By failing and refusing to furnish the Union with certain requested information since about July 27, 1990, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1), and Section 2(6) and (7) of the Act.

## Remedy

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. We shall order the Respondent to furnish the Union with the requested information it has failed to provide.

## ORDER

The National Labor Relations Board orders that the Respondent, Commercial National Flooring, Inc., Englewood, Ohio, its officers, agents, successors, and assigns, shall

## 1. Cease and desist from

(a) Refusing to bargain with Resilient Floor & Decorative Covering Workers Local 1179, affiliated with International Brotherhood of Painters & Allied Trades, AFL--CIO as the exclusive representative of the employees in the following appropriate unit by failing and refusing to furnish the Union with requested information necessary for it to fulfill its function as the bargaining representative:

All workmen of Respondent who handle the tools and materials of the trade in doing all work which may consist of measuring, cutting and laying of old and new carpet, linoleum-vinyl and all types of resilient floor and wall covering material, whether in sheets, rolls, squares, or interlocked. Plastic, laminated plastic, and metal wall tile, fitting devices for attachment of carpet, linoleum-vinyl, rubber and all other resilient floor and wall coverings, and fitting of metal or plastic caps and corners used in the installation of linoleum-vinyl and plastic counters, tables and steps. Artificial turf and derivatives thereof, also shall include Monolithic covering (Monolithic shall mean: All resilient seamless materials such as epoxy, polyurethane, plastics, and their derivatives components, systems and all other material used as a resilient floor or was [sic] covering, exclusive of the way in which they are applied.); and handling and preparatory work for all the above mentioned, including underlayment in the geographical area of Kansas City, and all areas in Missouri over which the Union exercises jurisdiction and the following counties in Kansas: Wyandotte, Johnson, Leavenworth, Bourbon, Linn and Miami, and such other area as may be assigned by the International Brotherhood of Painters and Allied Trades, EXCLUDING guards and supervisors as defined in the Act.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Furnish the Union with the requested information it has failed to provide since about July 27, 1990.

(b) Post at its facility in Englewood, Ohio, copies of the attached notice marked "'Appendix.'"<sup>1</sup> Copies of the notice, on forms provided by the Regional Director for Region 17, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

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<sup>1</sup> If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "'POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD'" shall read "'POSTED PURSUANT TO A JUDGMENT OF THE UNITED STATES COURT OF APPEALS ENFORCING AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD.'"

(c) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

Dated, Washington, D.C. November 21, 1990

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James M. Stephens, Chairman

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Mary Miller Cracraft, Member

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Clifford R. Oviatt, Jr., Member

(SEAL)

NATIONAL LABOR RELATIONS BOARD

APPENDIX

NOTICE TO EMPLOYEES

Posted by Order of the  
National Labor Relations Board  
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT refuse to bargain with Resilient Floor & Decorative Covering Workers Local 1179, affiliated with International Brotherhood of Painters & Allied Trades, AFL--CIO as the exclusive representative of the employees in the following appropriate unit by failing and refusing to furnish necessary information requested by the Union:

All workmen of Respondent who handle the tools and materials of the trade in doing all work which may consist of measuring, cutting and laying of old and new carpet, linoleum-vinyl and all types of resilient floor and wall covering material, whether in sheets, rolls, squares, or interlocked. Plastic, laminated plastic, and metal wall tile, fitting devices for attachment of carpet, linoleum-vinyl, rubber and all other resilient floor and wall coverings, and fitting of metal or plastic caps and corners used in the installation of linoleum-vinyl and plastic counters, tables and steps. Artificial turf and derivatives thereof, also shall include Monolithic covering (Monolithic shall mean: All resilient seamless materials such as epoxy, polyurethane, plastics, and their derivatives components, systems and all other material used as a resilient floor or was [sic] covering, exclusive of the way in which they are applied.); and handling and preparatory work for all the above mentioned, including underlayment in the geographical area of Kansas City, and all areas in Missouri over which the Union exercises jurisdiction and the following counties in Kansas: Wyandotte, Johnson, Leavenworth, Bourbon, Linn and Miami, and such other area as may be assigned by the International Brotherhood of Painters and Allied Trades, EXCLUDING guards and supervisors as defined in the Act.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.



WE WILL furnish the Union with the requested information we have failed to provide since about July 27, 1990.

COMMERCIAL NATIONAL FLOORING,  
INC.

\_\_\_\_\_  
(Employer)

Dated \_\_\_\_\_ By \_\_\_\_\_  
(Representative) (Title)

This is an official notice and must not be defaced by anyone.

This notice must remain posted for 60 consecutive days from the date of posting and must not be altered, defaced, or covered by any other material. Any questions concerning this notice or compliance with its provisions may be directed to the Board's Office, 5799 Broadmoor, Suite 500, Kansas City, Kansas 66202--2408, Telephone 913--236--2776.